

IN THE UNITED STATES DISTRICT COURT
1FOR THE DISTRICT OF NEBRASKA

SEAN JOHNSTON,)	
)	
Plaintiff,)	4:06CV3040
)	
v.)	
)	
NEBRASKA DEPARTMENT OF)	ORDER
CORRECTIONAL SERVICES,)	
HAROLD W. CLARKE, ROBERT P.)	
HOUSTON, MICHAEL L. KENNEY,)	
RICHARD D. CRUICKSHANK, MARIO)	
PEART, RANDY CROSBY, CALVIN)	
HAYWOOD, JOHN CASEBOLT, and)	
RANDY T. KOHL,)	
)	
Defendants.)	
)	

This matter is before the court on plaintiff's motion to reconsider, Filing No. 68, defendants' motion to dismiss, Filing No. 69; plaintiff's affidavit by his father, Filing No. 70; and defendants' motion to strike affidavit, Filing No. 71. On November 19, 2007, this court entered a memorandum and order finding in favor of the defendants, Filing No. 66, and entered a judgment dismissing the case, Filing No. 67. Plaintiff now asks this court to reconsider its decision. Plaintiff contends that on the same date as the filing of the court's judgment, he went to a specialist who says he still needs back surgery. The defendants contend that plaintiff has filed this motion out of time, has failed to file appropriate documentation and supporting affidavits, and has failed to comply with the requirements of NeCivR. 60.1(a), (b), and (c), and NeCivR 7.1 concerning briefs and affidavits.

The court agrees with the defendants. Plaintiff failed to file his motion for reconsideration within ten business days of the order of the court pursuant to NeCivR

60.1(b). Second, the plaintiff has shown no manifest error in the prior ruling or new facts that could have been brought to the court's attention. NeCivR 60.1(c). Plaintiff has filed an affidavit of his father indicating plaintiff still has pain and needs surgery. That is not the evidence contemplated by the rules. Plaintiff argues that he saw Dr. Devney on November 19, 2007, and Dr. Devney agrees with Dr. Longley's opinion of 2006 that plaintiff needs additional surgery. However, plaintiff did not offer any opinions or affidavits authored by Dr. Devney supporting these arguments, although he indicated such opinions would be forthcoming in December 2007. In any event, the court has reviewed the filings and its previous memorandum and order and finds it will not grant the motion for reconsideration.

THEREFORE, IT IS ORDERED:

1. Plaintiff's motion for reconsideration, Filing No.68, is denied;
2. Defendants' motion to dismiss plaintiff's motion, Filing No. 69, is granted; and
3. Defendants' motion to dismiss, plaintiff's affidavit, Filing No. 71, is denied as moot.

DATED this 22nd day of February, 2008.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge